Row-Wall Electric, Inc. *and* International Brotherhood of Electrical Workers, Local 602. Cases 16–CA–23630 and 16–CA–23814

October 29, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon a charge and an amended charge filed by the Union on May 14 and June 14, 2004 in Case 16–CA–23630, and a charge filed by the Union in Case 16–CA–23814 on August 17, 2004, the General Counsel issued the consolidated complaint on September 14, 2004, against Row-Wall Electric, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On October 1, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On October 5, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was filed by September 28, 2004, all the allegations in the consolidated complaint could be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that on September 24, 2004, counsel for the Respondent informed the Region that the Respondent had closed its business and that no answer would be filed. On that same date, the Region advised the Respondent that a motion for default judgment would be filed if the Respondent failed to file an answer. Thereafter, on September 28, 2004, the Respondent's counsel notified the Region, in writing, that the Respondent would not be filing an answer to the consolidated complaint and that the Respondent had closed its business.[1]

In the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Texas corporation with an office and a place of business in Lubbock, Texas, has been engaged as an electrical contractor in the construction industry, performing residential, commercial, and industrial construction. During the 12-month period preceding the issuance of the consolidated complaint, the Respondent, in conducting its business operations described above, purchased materials and services valued in excess of $50,000 directly from points outside the State of Texas.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Brotherhood of Electrical Workers, Local 602 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Lynn B. Rowan, III has been the Respondent's owner, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and/or an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining with the meaning of Section 9(b) of the Act:

> Included: All employees performing electrical construction work within the jurisdiction of the Local on all present and future jobs.
>
> Excluded: All guards and supervisors as defined in the Act.

[1] In this letter, the Respondent's counsel stated that he had referred the Respondent to bankruptcy counsel. The General Counsel's motion does not indicate whether the Respondent has actually filed a bankruptcy petition. Even assuming that the Respondent has, however, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited therein; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

At all material times, based on Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the unit, and has been recognized as the representative by the Respondent. This recognition was embodied in a recognition agreement dated October 3, 1994.

Since about March 2, 2004, the Respondent and the Union met for the purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment of the unit.

On about March 2, 2004, the Respondent failed to confirm with the Union the time to meet for negotiation; arrived at the union hall unannounced; and offered a proposal designed to frustrate the bargaining process.

On about April 22, 2004, the Respondent attended a bargaining session without legal counsel and unprepared to bargain.

On about April 22 and June 30, 2004, the Respondent made statements at bargaining sessions demonstrating the Respondent's unwillingness to bargain in good faith and intent to frustrate the bargaining process.

On about May 10, 2004, by letter, the Respondent withdrew recognition from the Union as the exclusive collective-bargaining representative of the unit, and on that same date, the Respondent refused to bargain with the Union as the collective-bargaining representative of the unit.

By its overall conduct, including the conduct described above, the Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit.

On about June 22 and July 29, 2004, the Union requested that the Respondent furnish the Union with a list of the Respondent's employees.

On about June 30 and July 29, 2004, the Union requested that the Respondent furnish the Union with wage and benefit rates for all employee classifications.[2]

The information requested by the Union, described above, is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about June 22, 2004, the Respondent has failed and refused to furnish the Union with the information requested by it.

[2] Paragraph 15 of the consolidated complaint inadvertently states that the "Respondent requested that Respondent" furnish the Union with wage and benefit rates. Paragraph 16 of the complaint, however, correctly states that the Union requested the information described in paragraph 15.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent unlawfully withdrew recognition from the Union, we shall order the Respondent to recognize and bargain with the Union, on request, as the exclusive representative of the unit employees with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document.

In addition, having found that the Respondent has failed and refused since June 22, 2004, to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the requested information.

Further, because the Respondent has assertedly closed its business, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its unit employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Row-Wall Electric, Inc., Lubbock, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain in good faith with International Brotherhood of Electrical Workers, Local 602, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> Included: All employees performing electrical construction work within the jurisdiction of the Local on all present and future jobs.
>
> Excluded: All guards and supervisors as defined in the Act.

(b) Failing and refusing to furnish the Union with information it has requested that is necessary and relevant to the performance of its duties as the exclusive collec-

tive-bargaining agent of the employees in the above appropriate unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain collectively with the Union as the exclusive representative of the Respondent's employees in the above unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody the agreement in a signed document.

(b) Furnish the Union with the information it requested on about June 22, June 30, and July 29, 2004, specifically, a list of the Respondent's employees and the wage and benefit rates for all employee classifications.

(c) Within 14 days after service by the Region, duplicate and mail, at its own expense, and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appendix"[3] to the Union and to all unit employees employed at the Respondent's Lubbock, Texas facility on or after March 2, 2004.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 29, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
Mailed by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize and bargain in good faith with International Brotherhood of Electrical Workers, Local 602, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All employees performing electrical construction work within the jurisdiction of the Local on all present and future jobs.

Excluded: All guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to furnish the Union with information it has requested that is necessary and relevant to the performance of its duties as the exclusive collective-bargaining agent of the employees in the above appropriate unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain collectively with the Union as the exclusive representative of our employees in the above unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody the agreement in a signed document.

WE WILL furnish the Union with the information it requested on about June 22, June 30, and July 29, 2004, specifically, a list of our employees and the wage and benefit rates for all employee classifications.

ROW-WALL ELECTRIC, INC.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."